

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	
)	CIVIL ACTION NO.
BROWNING-FERRIS, INC.,)	
CONSTELLATION POWER SOURCE)	
GENERATION, INC.)	
GENERAL MOTORS CORP.,)	
LUCENT TECHNOLOGIES, INC.)	
)	
Defendants.)	
)	
(Addresses of Defendants are listed in Attachment 1)		

COMPLAINT

The United States of America, for and at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges as follows:

STATEMENT OF THE CASE

1. This is a civil action instituted pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606 and 9607, seeking the performance of work and reimbursement of funds expended by the United States in response to a release and threatened release of hazardous substances from a disposal site located at and near the intersection of Kane and Lombard Streets in Baltimore, Maryland (the "Facility" or "Site"). The United States also seeks a declaratory judgement, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), and 28 U.S.C. § 2201, on the Defendants' liability for further response costs that will be binding in any

subsequent action or actions to recover such costs.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue in this District is proper pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b).

DEFENDANTS

4. Defendant Browning-Ferris, Inc. ("BFI") is a corporation organized under the laws of the State of Maryland. Robb Tyler, Inc. was merged into RTI, Inc., a subsidiary of BFI, on June 3, 1970. RTI, Inc. changed its name to Robb Tyler, Inc. on June 30, 1970. On August 31, 1978, Robb Tyler, Inc. was merged into BFI. BFI therefore is the successor to the liabilities of Robb Tyler, Inc. BFI's predecessors accepted hazardous substances for transport to disposal facilities or sites selected by them. Specifically, on information and belief, Robb Tyler, Inc. accepted wastes containing hazardous substances from Western Electric Company, Inc. and General Motors Corporation for transport for disposal, and transported the wastes to the Facility, which Robb Tyler, Inc. selected as the disposal facility. BFI's predecessors deposited such waste at the Facility, and hazardous substances like those contained in such wastes have been found at the Facility.

5. Defendant Constellation Power Source Generation, Inc. ("Constellation") is a corporation organized under the laws of the State of Maryland and is the successor in interest to Baltimore Gas & Electric Company. Constellation's predecessors, by contract, agreement or otherwise arranged for disposal, or arranged with a transporter for the transport for disposal, of

hazardous substances owned or possessed by them, by another party or entity, at a facility owned or operated by another party or entity and containing such hazardous substances. Specifically, and on information and belief, Constellation's predecessors arranged for J. William Parker & Sons to transport fly ash containing hazardous substances from Constellation's power plants in the Baltimore area. J. William Parker & Sons deposited at least some of the fly ash at the Facility, and hazardous substances like those contained in such wastes have been found at the Facility.

6. Defendant General Motors Corporation ("GM") is a corporation organized under the laws of the State of Delaware. GM by contract, agreement or otherwise arranged for disposal, or arranged with a transporter for the transport for disposal, of hazardous substances owned or possessed by GM, by another party or entity, at a facility owned or operated by another party or entity and containing such hazardous substances. Specifically, and on information and belief, GM arranged for its employees and employees of Fred Sauer, Jr., or Robb Tyler, Inc. or both to transport wastes containing hazardous substances from GM's manufacturing facility on Broening Highway, Baltimore, Maryland. At least some of those wastes were deposited at the Facility, and hazardous substances like those contained in such wastes have been found at the Facility.

7. Defendant Lucent Technologies, Inc. ("Lucent"), is the successor in interest to AT&T Technologies, Inc. ("AT&T") (formerly known as Western Electric Company, Inc.) and is a corporation organized under the laws of the State of Delaware. Lucent's predecessors by contract, agreement or otherwise arranged for disposal, or arranged with a transporter for the transport for disposal, of hazardous substances owned or possessed by them, by another party or

entity, at a facility owned or operated by another party or entity and containing such hazardous substances. Specifically, and on information and belief, Lucent's predecessors arranged for Robb Tyler, Inc. and employees of Fred Sauer, Jr. to transport wastes containing hazardous substances from Western Electric Company's Baltimore Works. At least some of those wastes were deposited at the Facility, and hazardous substances like those contained in such wastes have been found at the Facility.

GENERAL ALLEGATIONS

8. The Facility is located at and near the intersection of Kane and Lombard Streets in Baltimore, Maryland. From at least 1966 to 1983, various wastes, including wastes containing hazardous substances, were buried at, or deposited onto the surface of, the Facility.

9. In April 1984, the State of Maryland requested EPA's assistance in securing the cleanup of a parcel, which later became known as Operable Unit No. 1 of the Facility ("OU 1"), on which a portion of a large landfill operated. EPA investigated OU 1 and discovered more than 1,000 drums, some of which contained hazardous substances. From March 6 through June 28, 1984, EPA conducted an emergency removal at OU 1 of the Facility pursuant to Section 104(a) of CERCLA, 42 U.S.C. § 9604(a). During the removal, EPA erected a fence around OU 1 to prevent unauthorized persons from entering; took samples of substances found in the drums, soils and surface and ground waters; removed and disposed of 1,163 drums and surface soils; and installed a new layer of top soil to restore and stabilize the site. Analysis of the samples taken by EPA confirmed the presence of arsenic, beryllium, chromium, copper, nickel, selenium, naphthalene, chlorobenzene, dichlorobenzene, dichloroethane, trichloroethene, ethylbenzene, benzene, toluene, vinyl chloride, and cyanide at OU 1 of the Facility.

10. The Site was listed on the National Priorities List, 40 C.F.R. Part 300, Appendix B, in June 1986.

11. In September 1987, EPA issued a Record of Decision ("ROD") selecting remedial action for implementation at OU 1 of the Site. EPA implemented the work selected in the OU 1 ROD.

12. In October 1989, the United States sued parties, including the four Defendants, under Section 107 of CERCLA, 42 U.S.C. § 9607, to recover its costs of response at the Site. The State of Maryland subsequently filed its own action to recover its costs. The parties sued by the United States and the State of Maryland ("Plaintiffs") in turn sued seventeen parties as third-party defendants.

13. In 1995, the Plaintiffs entered into a settlement with the four Defendants or their predecessors and sixteen third-party defendants for reimbursement of response costs and performance of operation and maintenance of the remedial action implemented by EPA at OU 1 of the Facility.

14. In July, 2002, the four defendants herein completed the Remedial Investigation/Feasibility Study ("RI/FS") for Operable Unit 2 of the Site ("OU 2"), which encompasses the rest of the landfill and groundwater impacted by the entire landfill. The RI/FS identified substances including, but not limited to, 1,1,2-trichloroethane; acetone; benzene; carbon tetrachloride; chloroform; and methylene chloride in groundwater. In September 2003, EPA issued a ROD for OU 2 in which it selected a remedy which involves, among other things, treating groundwater using enhanced reductive dechlorination and implementation of institutional controls.

15. The United States' actions at or in connection with the Site, and the remedial measures that EPA selected to be implemented at the Site, as described above, were "response" actions as defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601 (25).

16. To date, EPA has incurred at least \$1,842,371 in unreimbursed response costs at the Site.

FIRST CLAIM FOR RELIEF

17. Paragraphs 1 through 16 are realleged and incorporated herein by reference.

18. Each of the Defendants is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

19. The arsenic, beryllium, chromium, copper, nickel, selenium, naphthalene, ethylbenzene, benzene, toluene, and cyanide referenced in paragraph 9, above, and the 1,1,2-trichloroethane; acetone; benzene; carbon tetrachloride; chloroform; and methylene chloride identified in paragraph 14, above, are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

20. The Facility is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

21. The hazardous substances found at the Facility have been and are being released into the environment at and around the Facility and there is a substantial threat that such releases will occur in the future.

22. EPA has undertaken and is continuing to undertake necessary or appropriate response measures in connection with the Facility for purposes authorized by Section 104 of CERCLA, 42 U.S.C. § 9604.

23. The United States has incurred response costs in connection with the Facility. All such costs were incurred not inconsistent with the National Contingency Plan.

24. Defendants are within the classes of persons described in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

25. Defendants are jointly and severally liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all response costs incurred by the United States not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300, in connection with the response actions at the Site.

SECOND CLAIM FOR RELIEF

26. Paragraphs 1 through 25 are incorporated herein by reference.

27. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), provides in pertinent part:

In addition to any other action taken by a State or local government, when the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

28. By Executive Order 12580 dated January 23, 1987, the President's functions under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), have been delegated to the Administrator of EPA.

29. EPA has determined that there is or may be an imminent and substantial endangerment to the public health or welfare or the environment because of actual or threatened

releases of hazardous substances from the Site.

30. The Defendants are jointly and severally liable for the injunctive relief to which the United States is entitled at OU 2 of the Site under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), including, but not limited to, such relief as may be necessary to abate the imminent and substantial endangerment to the public health or welfare or the environment caused by the release or threatened release of hazardous substances from OU 2.

PRAYER FOR RELIEF

Wherefore, Plaintiff, the United States of America, requests that this Court:

- A. Enter an Order providing that Defendants shall jointly and severally take all actions necessary to remedy the conditions at OU 2 that may present an imminent and substantial endangerment to the public health, welfare or the environment;
- B. Enter an Order providing that Defendants reimburse the United States for all response costs incurred in connection with the response actions conducted at the Facility, together with the interest and all costs of enforcement;
- C. Enter a declaratory judgment on liability for further response costs that will be binding in any subsequent action by the United States against the Defendants to recover such further response costs; and
- D. Provide such other and further relief as may be just and proper.

Respectfully submitted,

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